

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 17, 2009

No. 08-50590
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

OLVER ADALI SUAZO-IRIAS, also known as Erick Hernan Martinez

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:06-CR-50-ALL

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:*

In 2006, Olver Adali Suazo-Irias (Suazo) pleaded guilty to possession with the intent to distribute cocaine powder and five grams or more of cocaine base. He was sentenced to the statutory minimum sentence of 60 months of imprisonment. He appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a reduction of sentence, which was based on the United States Sentencing Commission's amendments to the Sentencing Guidelines's base

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

offense levels for crack cocaine. We review the denial of a § 3582(c)(2) motion for abuse of discretion. *United States v. Shaw*, 30 F.3d 26, 28 (5th Cir. 1994).

Citing *United States v. Booker*, 543 U.S. 220 (2005), and *Kimbrough v. United States*, 552 U.S. 85 (2007), Suazo argues that the district court abused its discretion in denying his motion to reduce his sentence because the district court erroneously believed its authority to reduce his sentence was limited by U.S.S.G. § 1B1.10. The Government has filed a motion for summary affirmance, or, alternatively, for an extension of time within which to file a brief.

The district court could not have imposed a guidelines sentence that was lower than the statutorily mandated minimum penalty. *See United States v. Harper*, 527 F.3d 396, 411 (5th Cir.), *cert. denied*, 129 S. Ct. 212 (2008); *United States v. Gomez-Herrera*, 523 F.3d 554, 559 (5th Cir.), *cert. denied*, 129 S. Ct. 624 (2008). Accordingly, Suazo has not shown that the district court abused its discretion in denying his motion for a reduction of his sentence. *See Shaw*, 30 F.3d at 28.

The Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time is DISMISSED as moot, and the judgment of the district court is AFFIRMED.